

REMARKS

This responds to the Office Action mailed on February 20, 2008.

Claims 1, 8, 15 and 21 are amended; claim 20 is hereby canceled, without prejudice to the Applicant; as a result, claims 1-19 and 21-25 are now pending in this application.

§112 Rejection of the Claims

Claim 10 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention.

Applicant has corrected this in the manner suggested by the Examiner. Accordingly, this rejection is now a moot point and should be withdrawn.

§101 Rejection of the Claims

Claims 15-19 were rejected under 35 U.S.C. § 101 because the claimed invention is directed to non-statutory subject matter. Claim 20 and its limitations were placed in independent claim 15 by way of amendment above. Claim 20 was not rejected as being non statutory; as such, this rejection is now moot and should be withdrawn. Applicant respectfully requests an indication of the same.

§103 Rejection of the Claims

Claims 1-25 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cain (U.S. 6,857,026) in view of Ash et al. (U.S. 6,590,867). It is of course fundamental that in order to sustain an obviousness rejection that each and every limitation in the rejected claims must be taught or suggested in the proposed combination of references.

There are several fundamental differences between what Applicant has done and the cited references.

Firstly, Cain takes an approach where the selection of a next path when the preferred path is unavailable is predetermined and noted in the routing table via weights or priorities, such that the intermediate nodes do not independently make a determination of which next path to select when the preferred path is unavailable. *See* Cain column 4 lines 30-41. The Examiner appears to have acknowledged such a situation since Ash is being cited in combination with Cain

because Ash fails to teach evaluating policies at the intermediate nodes. Moreover, Cain was concerned about performance and appears to have intentionally elected not to do any such processing at the intermediate nodes beyond just re-prioritizing the paths when the preferred path is no longer available. *See* Cain column 3 lines 7-9 and lines 23-36.

Secondly, the Ash reference selects a path in an entirely different fashion than what Cain proposed or what Applicant proposed. Ash selects the path(s) for calls over a phone or voice network and does so by querying the destination node. *See* Ash column 2 line 65 and continuing to column 3 line 5, Abstract, *etc.* There is no path determination done by the intermediate nodes. It appears that it is always the entry router that predetermines a desired path for the call and the manner in which this is done is via querying the destination node. Once the origin router determines available paths and prioritizes it checks them to see what's available before injecting the call into the network. At that point, it appears the path is not changed at the intermediate nodes. Applicant notes that at least with respect to original claim 1, Applicant included an "or" condition such that the intermediate nodes did not have to necessarily evaluate policies when the entry node did. Applicants have amended this such that now this claim requires at least one intermediate node to evaluate the policies. So, it appears Ash no longer can be said to read on this limitation because the intermediate nodes do not alter the path once the call is injected into the network in the Ash reference.

The Examiner's attention is directed to column 5 lines 41-55 of Ash, here it can be seen what Applicant is contending about the Ash reference. That is, Ash does not perform any path changes at the intermediate nodes. Quality of Service or queue processing occurs at each intermediate node but there are not path changes that occur. This makes sense because Ash is directed to handling a telephone network and once a path is chosen it is reserved and used. *See* Ash column 4 lines 7-16.

So, Applicant respectfully contends that Cain fails to permit path resolution in response to policy evaluation; rather Cain simply selects the next highest priority path when the desired path is unavailable and reorders the routing table. Moreover, Ash fails to permit any changing of the path by the intermediate nodes; rather the path is predetermined and fixed by the originating node; further, Ash just processes queue priorities and processing priorities for the packet at the

intermediate nodes but does not do this to change the path it is done to determine when the intermediate node will process the packet along the predetermined path.

Accordingly, Applicant respectfully asserts that the proposed combination does not render the amended claims obvious and respectfully requests that the rejections be withdrawn and the claims of record allowed.

Reservation of Rights

In the interest of clarity and brevity, Applicant may not have equally addressed every assertion made in the Office Action, however, this does not constitute any admission or acquiescence. Applicant reserves all rights not exercised in connection with this response, such as the right to challenge or rebut any tacit or explicit characterization of any reference or of any of the present claims, the right to challenge or rebut any asserted factual or legal basis of any of the rejections, the right to swear behind any cited reference such as provided under 37 C.F.R. § 1.131 or otherwise, or the right to assert co-ownership of any cited reference. Applicant does not admit that any of the cited references or any other references of record is relevant to the present claims, or that they constitute prior art. To the extent that any rejection or assertion is based upon the Examiner's personal knowledge, rather than any objective evidence of record as manifested by a cited prior art reference, Applicant timely objects to such reliance on Official Notice, and reserves all rights to request that the Examiner provide a reference or affidavit in support of such assertion, as required by MPEP § 2144.03. Applicant reserves all rights to pursue any cancelled claims in a subsequent patent application claiming the benefit of priority of the present patent application, and to request rejoinder of any withdrawn claim, as required by MPEP § 821.04.

CONCLUSION


Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (513) 942-0224 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(513) 942-0224

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By /  /
Joseph P. Mehrle
Reg. No. 45,535